

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNUM LIFE INSURANCE COMPANY)
OF AMERICA,)
Plaintiff,)
v.) Civil Action No. 3:04CV247-MU
DERRICK MACK, et al.,)
Defendants.)

ORDER GRANTING STAY

This cause is before the Court on the motion of Plaintiff UNUM Life Insurance Company of America and Defendants Melvin Nichols and Patricia A. Nichols, pursuant to Rule 16 of the Federal Rules of Civil Procedure, to stay further proceedings in this action pending the completion of the criminal proceedings commenced by the State of North Carolina against Defendant Derrick Mack as a result of the death of the late Tasha N. Mack.

It appears to the Court that UNUM Life filed this action for interpleader under Rule 22 of the Rules of Civil Procedure and the Employee Retirement Income Security Act of 1974 as a result of conflicting claims to life insurance benefits payable by UNUM Life as a result of the death of Tasha N. Mack under its Group Policy No. 102947-0003 issued to Zenith Insurance Company, that Defendant Derrick Mack was the husband of the late Tasha N. Mack and was named as the primary beneficiary of her life insurance benefits under the Group Policy, that Defendants Melvin Nichols and Patricia A. Nichols were the parents of the late Tasha N. Mack and would be entitled to receive the life insurance benefits if Derrick Mack is disqualified from receiving them and that Mr. Mack has been indicted by the State of North Carolina for the murder of Tasha N. Mack and is presently

incarcerated in the Mecklenburg County jail awaiting trial on those charges in a proceeding entitled *State v. Derrick D. Mack*, 05 CRS 249387 (Mecklenburg County).

It further appears to the Court that the disposition of the criminal charges against Mr. Mack may substantially facilitate the resolution of the conflicting claims to the life insurance benefits, that while those charges remain pending Mr. Mack's ability to participate in this action is substantially limited, that staying further proceedings in this action will reduce the risk of any conflict between this action and the pending criminal prosecution and that good cause exists for the requested stay.

NOW, THEREFORE, it is hereby ordered that:

1. All proceedings in this action, except those specified in the next paragraph, shall be stayed until a final judgment is entered in the criminal proceedings against Mr. Mack and until any direct appeal from such a judgment has been completed;
2. The stay will not apply to any motions that UNUM Life may wish to file for discharge from further liability under the Group Policy, for dismissal of any pending claims against it or from this action or for an award of costs and attorneys' fees; and
3. The parties shall file a report with the Court at least every four months on the status of the criminal charges pending against Mr. Mack.

Signed: June 28, 2006



Graham C. Mullen
United States District Judge

